

Town of Amherst  
Zoning Board of Appeals - Special Permit  
*DECISION*

**Applicant:** Adrie and Ben Lester, 325 Amherst Road, Pelham, MA 01002

**Date Application filed with the Town Clerk:** July 31, 2006

**Nature of request:** Petitioner seeks a Special Permit, under Section 9.22 of the Zoning Bylaw, to operate a bakery/cafe.

**Location of property:** 319 Main Street, Map 14B, Parcel 28, R-G zone.

**Legal notice:** Published in the Daily Hampshire Gazette on August 3 and August 9, 2006, and sent to abutters on August 2, 2006.

**Board members:** Barbara Ford, Russ Frank and Jane Ashby

**Submissions:** The applicants submitted the following documents:

- A document describing the business entitled “Wheatberry Organic Artisan Bakery”;
- A Management Plan for Wheatberry LLC;
- A Management Plan for 321 Main Street, prepared by Kamins Real Estate, approved by the Board on July 25, 2005;
- A list entitled “Management Plan Additions for Wheatberry” submitted on September 5, 2006;
- Photographs as follows:
  - A photograph of the proposed interior furnishings submitted on September 5, 2006;
  - A photograph of the front of the building containing information about the proposed main sign;
  - A photograph of the proposed “goose-neck” lights to be used to illuminate the sign;
- A Sample Menu, including information about how menu items will be cooked;
- A Floor Plan showing the proposed layout for the Main Level and Lower Level, submitted on September 5, 2006;
- A Site Plan, undated, showing the existing layout of the building, the parking lot and the dumpster.

Town staff submitted the following documents:

- Memorandum from the Planning Department, dated August 11, 2006, commenting on the application;
- Copies of previous Special Permits granted for the building, including ZBA FY2006-00044, ZBA FY2005-00035 and ZBA FY86-95;
- An email from Christine Brestrup to the applicants listing information that the Board requested at their August 18, 2006, public hearing;

**Site Visit:** August 15, 2006

At the site visit the Board was met by the applicants, Adrie and Ben Lester, and by Pat Kamins of Kamins Real Estate. The Board observed the following:

- The building is located in the Dickinson National Historic Register District, on a busy street, across from the Dickinson Museum;
- The building is surrounded by single-family and multi-family residential buildings and some commercial uses;
- The building currently houses a hair dressing salon, a karate school and a travel agency;
- The building is surrounded by a paved parking lot;
- Both the building and the parking lot are screened by vegetation from adjacent residential properties;
- The interior of the space, formerly used for Valley Bicycles, is large and unfinished;
- There is a dry basement available for storage;
- There is a door on the west side of the building, adjacent to the parking lot, where deliveries can be received.

**Public Hearing:** August 17, 2006

Ms. Ashby MOVED to elect Barbara Ford as Chair Pro Tem for the duration of this public hearing. Russ Frank SECONDED the motion. The Board VOTED unanimously to elect Ms. Ford as Chair Pro Tem.

At the public hearing Adrie and Ben Lester presented the petition. They made the following comments:

- The Lesters currently own a wholesale bakery business;
- They wish to have a retail outlet, to sell breads and pastries and to serve breakfast and lunch;
- There will be morning deliveries of pastries 6 days a week, Monday through Saturday, to wholesale customers; the wholesale deliveries will leave the bakery at 6:15 a.m., 9:00 a.m. and 10:00 a.m., four or five days a week;
- Hours of operation will be as follows:  
Retail hours: Sunday through Thursday 6:30 a.m. to 7 p.m.  
Friday and Saturday 6:30 a.m. to 9 p.m.  
Bakery hours: Monday through Sunday 3 a.m. to 4 p.m.
- At 3:00 a.m. one employee arrives to begin the baking;
- Currently the Lesters operate a licensed residential kitchen in their home; they are now doing baking and making and receiving deliveries in and out of a residential neighborhood in Pelham;
- The ovens are self venting; they will be vented out to the side of the building and up into the atmosphere; the only smells will be those of bread and pastries baking;
- There will be about 300 square feet of interior space for seating which will accommodate 20 people;
- There will be two public restrooms; there is already an employee restroom;
- Deliveries from distributors to the establishment will be bi-weekly; at first the Lesters stated that the deliveries would be at 4 a.m.; [later, at a continued public hearing, they described a modified delivery schedule]; delivery vehicles will turn off their engines while they are unloading; they will beep when they back up.

The Board asked about lighting. The applicants responded as follows:

- The first employee will come in at 3:00 a.m. and turn on the interior lights; the interior lights will not be visible from the outside on the west and south sides since the only windows there are high and have thick glass;
- There is one light bulb above the back door which will come on at 2:30 a.m. to light the way for the first employee; it will be on a timer and will turn itself off after the employee arrives; this light will be downcast;
- The front lights will come on at 6:00 a.m.;
- There will be gooseneck lights over the main front sign.

The Board asked the applicants to provide more information about the lights.

The applicants described the proposed sign. It will be partially made from bread dough, called “dead dough” or “salt dough”. The letters will be made out of bread dough. The dough will be finished in plastic to protect it from the weather. The Board asked for more detailed information about the sign.

The Board asked about the second sign proposed for the corner. The applicants stated that they would like to have a flat, wooden, two-sided sign on two wooden posts, probably located in the landscaped island at the northwest corner of the property.

Bonnie Weeks, Building Commissioner, asked about cooking and frying. The applicants stated that there would be no grill and no “fryolator”. The Board noted that the Management Plan submitted with the application did not mention breakfast or lunch. The applicants stated that they will have a kitchen and that most things will be cooked in the oven, including eggs. The Board asked the applicants to submit a sample menu.

Mr. Lester stated that the distributors would supply all types of food, including produce, to the café.

The Board noted that the bakery/café would be considered a Class I restaurant [under Section 3.352.0 of the Zoning Bylaw]. Ms. Ford asked about the kinds of utensils that will be used, the plans for clean-up and the method of trash disposal. The applicants stated that they plan to serve their fare on china plates with metal utensils. They will have take-out coffee cups. There will be no coffee roasting on the site.

The Board inquired about the applicants’ plans for outdoor dining, expressing concern about the fact that the paved area proposed for outdoor dining also accommodates car traffic. The Board suggested that a barrier might be helpful in demarcating an area for outdoor dining.

The Board noted that the site plan did not show that the existing parking was set back from the building on the west side. There is a lawn area on the west side of the building that is about 8 feet wide. The Board noted that Kamins Real Estate is responsible for maintenance of the site, including the landscaping.

The Board noted that there had been a condition placed on a previous permit requiring that wheelstops be placed along the west side of the building to prevent cars from driving within 8 feet of the building. In addition the parking lot needs to be demarcated with lines painted on the pavement.

Ms. Ashby asked about the kitchen area. The applicants stated that there would be a “panini” press in the kitchen. At first the applicants stated that no food would be prepared on site and that food would be prepared off site and heated up as needed. [Later, at a continued public hearing they modified this statement.] The applicants noted that they had owned the bakery business for 1 ½ years and that overall they had been in the food business for 3 or 4 years. Ms. Lester stated that she was a graduate of the Connecticut Culinary Institute.

The applicants stated that they would serve the same food items for lunch and in the evening, until closing and that there will be no separate dinner menu.

Ms. Weeks asked about the cooking of meats. At first the applicants stated that there would be no cooking of meats and that the meats served would be deli meats. [Later, at a continued public hearing the applicants modified this statement.] Ms. Weeks noted that the applicants should include in their Special Permit

permission to install an “ancil” system for a stove if they intended to install one. Otherwise they would need to modify their Special Permit if and when they decided to install a stove.

Ms. Ashby asked about the hours of other local businesses. Mr. Frank stated that Bruno’s is open until 3:00 a.m. He noted that the applicants were proposing to have their first employee arrive at 3:00 a.m.

The applicants stated that the first employee turns on the ovens and begins the baking process. The aromas of baking will begin to emanate at 3:45 a.m.

The Board noted that there are houses nearby. They expressed concern about early delivery times and the noise associated with deliveries. However, they also noted that the first employee will be performing all work inside. The applicants commented that the interior activities would not produce substantial noise and that the windows do not open, so no noise will emanate from the building. Mixers will be turned on at 6:00 or 7:00 a.m., but the sound will be contained within the kitchen. The vent fans are not expected to make unusual noise. During business hours there will be pre-recorded music in the seating area.

The Board asked the applicants to research loading and delivery times allowed in the downtown area and to consider modifying the early-morning delivery time to the site by the large trucks.

The Board discussed the issue of seasonal outdoor dining, including the need for a trash and a cigarette receptacle outside. Ms. Weeks noted that smoking is allowed outside.

The Board asked the applicants for more definitive plans for the interior and exterior of the business, including dimensions.

The applicants stated that there would be about 4 employees, two of whom would be the applicant/owners. They stated that one of the applicant/owners would be on site all the time.

The Board asked about plans to use the basement. The applicants stated that they may wish to use the basement as a dish room and also for dry storage. They plan to install a three-basin sink and a commercial dishwasher.

Mr. Frank asked about egress from the basement. Ms. Weeks stated that the basement is at grade level at the rear of the building. She stated that the applicants could put in a door to the alleyway in back.

Ms. Ford asked about the maximum number of employees at one time. Mr. Lester stated that there would be 2 or 3 counter people and 3 or 4 kitchen people so that there may be as many as 6 or 7 employees on site at one time.

The Board listed items that the applicants still needed to address, as follows:

- Clarify the maximum number of employees;
- Check into delivery times and try to arrange more normal hours of delivery;
- Provide a sample menu, with information about how the menu items would be cooked;
- Provide information about the tables and chairs to be used in the seasonal outdoor dining area;
- Make a statement that china and silverware, not paper plates and plastic, would be used in the outdoor dining area;
- Provide more definitive plans, including a floor plan, a site plan showing existing parking as it really exists, landscaping, lighting and signs;

- Provide exact details, including dimensions and materials, of the main sign and exterior lighting;
- Provide information about the proposed freestanding sign.

The Board discussed the issue of a directory sign for the building.

Mr. Frank MOVED to continue the evidentiary portion of the public hearing to Tuesday, September 5, 2006, at 1:00 p.m. Ms. Ashby SECONDED the motion. The Board VOTED unanimously to continue the evidentiary portion of the public hearing.

**Continued Public Hearing:** September 5, 2006

At the continued public hearing Adrie and Ben Lester made the following statements:

- The maximum number of employees who would be on site at one time would be 6;
- Deliveries from distributors will be made to the site during normal business hours (8 a.m. to 5 p.m.);
- There will be no outdoor dining at this time;
- There will be a 6-burner range with an ancil system installed in the kitchen;
- Non-disposable tableware will be used; there will be no paper plates and no plastic utensils;
- Most food items will be baked in the oven, but some will be cooked on the range top;
- Kamins Real Estate, the property manager, is responsible for maintenance of the exterior so the applicants have not submitted a landscaping plan;
- There will be hand sinks installed, although they are not shown on the plan;
- The stairs to the basement will be renovated as needed to satisfy Building Code requirements.

The applicants presented the following submissions:

- They submitted the sample menu, including information about how items would be cooked or baked;
- They submitted a floor plan showing dimensions;
- They submitted an addendum to the Management Plan.

The Board asked about parking in the front of the building; the applicants stated that they would ask Kamins to put up a sign prohibiting parking in front of the building, directly in front of their bakery/café; the applicants plan to install flower containers in front of the building to discourage parking, containing flowers in the warm months and pine boughs in the winter.

The Board asked that parking lines be drawn on the pavement.

The applicants stated that the main sign over the front door will be 27 inches tall. It will have a wooden base with letters made from “pate morte” dough. It will be treated with poly-urethane and painted. There will be “goose-neck” lamps above the sign. They showed pictures of the proposed sign and lamps.

Ms. Weeks advised the Board that, due to the non-conforming uses of the building, the need for a Special Permit and the fact that the building is in the R-G zone, the sign did not need to meet the 10% limit described in the Zoning Bylaw for signs in Commercial and Business districts. She noted that it was up to the Board to approve the size of the proposed sign. She further stated that if the Board approved the sign as shown in the picture, any significant changes could be brought back to the Board at a public meeting.

The Board discussed the possibility of a directory sign for the whole building. The Board noted that a condition could be added that would require that a proposal for a directory sign come back to the Board at a public meeting for approval. The Board also advised the applicants that any signs in the window, if they

contain words, would be considered part of the overall area of signs, and would need to be approved by the Board.

Mr. Frank MOVED to close the evidentiary portion of the public hearing. Ms. Ashby SECONDED the motion. The Board VOTED unanimously to close the evidentiary portion of the public hearing.

### **Public Meeting – Discussion**

The Board developed a list of conditions under which they would be able to approve the application.

### **Public Meeting – Findings:**

Under Zoning Bylaw Section 9.22 the Board found that the proposed use as a bakery/café will not be substantially different in character or in its effect on the neighborhood than the previously-existing non-conforming use.

Under Zoning Bylaw Section 10.38 the Board found that:

10.380 and 10.381 – The proposal is suitably located in the neighborhood and is compatible with existing uses because there are other businesses in the building and in the surrounding neighborhood and the building has historically been used for commercial and retail uses.

10.382 and 10.385 – The proposal would not constitute a nuisance and reasonably protects the adjoining premises against detrimental or offensive uses on the site because there will be no fryolator used for preparing food, smells emanating from the building will be limited to the smell of baking bread and pastries and coffee being brewed, the delivery of goods to the site will be limited to normal business hours, exterior lights will be downcast, the sign is well-designed and there will be no music or loud noises emanating from the building.

10.383 and 10.387 – The proposal would not be a substantial inconvenience or hazard to abutters, vehicles or pedestrians and the proposal provides convenient and safe vehicular and pedestrian movement within the site and in relation to adjacent streets because there is ample parking for customers, one of the conditions of the permit requires that the parking spaces be clearly demarcated on the pavement, there will be no change in the way pedestrians move through or past the site, the applicants will request that the manager of the building install a sign to prevent parking in front of the bakery and there is a condition requiring that wheelstops be added to the west parking lot to prevent vehicles from driving too close to the building.

10.384 – Adequate and appropriate facilities would be provided for the proper operation of the proposed use because the parking lot is adequately sized and the interior space is large enough to accommodate the planned use.

10.386 – The proposal ensures that it is in conformance with the Parking and Sign regulations of the town because there is adequate parking on the site to accommodate the proposed use and the sign will be built and installed according to the details approved by the Board.

10.388 - The proposal ensures adequate space for the off-street loading and unloading of vehicles because there is room in the parking lot on the west side of the site for delivery vehicles to park during unloading.

10.389 - The proposal provides adequate methods of disposal and/or storage for sewage, refuse, recyclables and other wastes because the building is connected with the town sewer and there is a dumpster that is shared by tenants at the rear of the property.

10.393 – The proposal provides protection of adjacent properties by minimizing the intrusion of lighting because all exterior lighting will be downcast.

10.398 – The proposal is in harmony with the general purpose and intent of the Zoning Bylaw for the reasons enumerated above.

**Public Meeting – Zoning Board Decision**

Ms. Ashby MOVED to approve the application with the conditions as drafted in the public meeting. Mr. Frank SECONDED the motion. The Board VOTED unanimously to approve the application with conditions.

Mr. Frank MOVED to accept the findings as enumerated in the public meeting. Ms. Ashby SECONDED the motion. The Board VOTED unanimously to accept the findings.

Ms. Ashby MOVED to approve the conditions as enumerated in the public meeting. Mr. Frank SECONDED the motion. The Board VOTED unanimously to approve the conditions.

For all the reasons stated above the Board VOTED unanimously to grant a Special Permit with conditions, under Section 9.22 of the Zoning Bylaw, to operate a bakery/café, as applied for by Adrie and Ben Lester, at 319 Main Street, (Map 14B, Parcel 28, R-G zone).

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BARBARA FORD

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RUSSELL FRANK

\_\_\_\_\_  
JANE ASHBY

FILED THIS \_\_\_\_\_ day of \_\_\_\_\_, 2006 at \_\_\_\_\_,  
in the office of the Amherst Town Clerk \_\_\_\_\_.

TWENTY-DAY APPEAL period expires, \_\_\_\_\_ 2006.

NOTICE OF DECISION mailed this \_\_\_\_\_ day of \_\_\_\_\_, 2006  
to the attached list of addresses by \_\_\_\_\_, for the Board.

NOTICE OF PERMIT or Variance filed this \_\_\_\_\_ day of \_\_\_\_\_, 2006,  
in the Hampshire County Registry of Deeds.

Town of Amherst  
Zoning Board of Appeals

*SPECIAL PERMIT*

The Amherst Zoning Board of Appeals hereby grants a Special Permit, under Section 9.22 of the Zoning Bylaw, to operate a bakery/café, as applied for by Adrie and Ben Lester, at 319 Main Street, (Map 14B, Parcel 28, R-G zone) with the following conditions:

1. The project shall be built substantially in accordance with the plans approved by the Board on September 5, 2006.
2. The bakery/café shall be managed in accordance with the Management Plan, as revised, approved by the Board on September 5, 2006.
3. The hours of operation shall be as follows:

Retail hours:	Sunday through Thursday	6:30 a.m. to 7:00 p.m.
	Friday through Saturday	6:30 a.m. to 9:00 p.m.
Bakery hours	Monday through Sunday	3 a.m. to 4 p.m.
4. The maximum number of employees on site at one time shall be 6.
5. Deliveries to the site by distributors shall be as stated in the Management Plan, as revised, approved by the Board on September 5, 2006.
6. Permanent wheelstops shall be installed at the edge of the western parking area in order to maintain the eight-foot buffer between the parking lot and the building.
7. The main sign over the front door shall be built and installed substantially in accordance with the computer-generated image and text regarding the sign design, and in accordance with the Management Plan, approved by the Board on September 5, 2006. If substantial changes to the approved sign are proposed, the new sign information shall be submitted for review and approval by the Board at a public meeting.
8. The applicants may install landscape elements such as flower containers and trash receptacles adjacent to the building if they choose to do so.
9. Upon change of ownership or management the new owner or manager shall submit a Management Plan to the Board for approval at a public meeting.
10. Parking spaces on site shall be demarcated with lines on the pavement in accordance with the plan approved by the Board on September 5, 2006. The parking lot lines shall be painted no later than June 1, 2007.



11. Outdoor lighting, including the goose-neck lights proposed to be installed over the main sign, shall be substantially as proposed and approved by the Board on September 5, 2006. All exterior lighting shall be downcast.

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BARBARA FORD, Chair Pro Tem  
Amherst Zoning Board of Appeals

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DATE